IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

Crl.MC.No. 1195 of 2007()

CC.382/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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PETITIONER: ACCUSED

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1. K.M.MOHAMMED SALIM,
   S/O.K.MOHAMMED SHERIF, REHMATH NAGAR,
   MOVVAL, PALLIKARA, KANHANGAD, KASARAGOD.

2. BANU, W/O.K.MOHAMMED SHERIF,
   REHMATH NAGAR, MOVVAL, PALLIKERA,
   KANHANGAD, KASARAGOD.

3. K.M.VAHAB, S/O.MOHAMMED SHERIF,
   REHMATH NAGAR, MOVVAL, PALLIKERA,
   KANHANGAD, KASARAGOD.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: COMPLAINANT/STATE &DEFACTO COMPLAINANT

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1. STATE OF KERALA REPRESENTED BY
   STATION HOUSE OFFICER, VALAPATTANAM POLICE STATION
   THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. N.NOUSHI, D/O NAWAB JAN,
   DILSHAD MANZIL, P.O.KOLANCHERY, KANNUR DISTRICT.

R1 BY PUBLIC PROSECUTOR SRI. S.U. NAZAR
R2 BY ADV. SRI. T. MADHU

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 1195 of 2007

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Dated this the 28th day of May, 2007

O R D E R

The petitioners are the husband, mother-in-law and brother-in-law of the second respondent/defacto complainant. They face allegations under Section 498A r/w. 34 I.P.C. Proceedings commenced on the basis of a private complaint filed by the second respondent, which was forwarded to the police under Section 156(3) Cr.P.C. Cognizance was taken on the basis of the final report filed by the police after due investigation. The matter is pending before the learned Magistrate.

2. The petitioners have come before this Court during the pendency of the proceedings to apprise the Court of the fact that the dispute between the parties has been settled. Divorce has been effected. All payments due consequent to such divorce has been effected. Annex.II agreement has been entered into between the spouses. The disputes having thus been settled, the parties are residing separately and the pending prosecution continues to be unnecessary. In these circumstances the petitioners have come

before this Court along with the second respondent to request the court to prematurely terminate the proceedings against the petitioners.

3. The learned counsel for the second respondent vouches that the matter has been settled between the parties and he has been personally apprised of such settlement by the second respondent. The second respondent is not now interested in further prosecuting this case, submits the counsel.

4. From the submissions made at the Bar on behalf of the rival contestants, including the submission made by Adv. T. Madhu, counsel for the second respondent and from the averments in Annex.II, I am satisfied that the matter has been settled voluntarily and amicably by the parties. In view of the statements made, I am not insisting on a joint application by the second respondent and the petitioners. I accept that the matter has been settled. I am satisfied that if legally permissible the composition can be accepted and the proceedings brought to premature termination.

4. The offence under Section 498A I.P.C. is not legally compoundable and the composition cannot be accepted under Section 320 Cr.P.C. But the learned counsel for the petitioners relies on the decision in **B.S. Joshi** v. **State of Haryana** (AIR 2003 SC 1386). The said decision

is authority for the proposition that at times the interests of justice may transcend the interests of mere law and in such circumstances the provisions of Section 320 Cr.P.C. cannot be reckoned as a fetter on the sweeping powers of the Court under Section 482 Cr.P.C. to act in aid of justice. I accept the prayer of the counsel for the petitioners endorsed by the counsel for the second respondent.

5. This Crl.M.C. is hence allowed. C.C. No. 382 of 2006 pending before the Judicial First Class Magistrate-II, Kannur, against all the three petitioners/accused is hereby quashed.

(R. BASANT)
Judge

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